IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16/10/2003

CORAM

THE HONOURABLE MR.JUSTICE V.KANAGARAJ

CRIMINAL ORIGINAL PETITION No.9188 OF 2003
AND
CRL.M.P.No.3158 OF 2003.

1.K.Thilageswaran
2.M.Boopal
3.Kabilan
4.A.Rahul
5.Porkodi
6.P.Vijendran
7.Chithra
8.Palanivel ... Petitioners

-Vs-

1.State of Tamilnadu,
rep.by The Secretary to Government,
Home Department,
Secretariat,
Chennai-600 009.

2.The Director General of Police,
Government of Tamilnadu,
Police Headquarters,
Chennai-600 004.

3.The Commissioner of Police,
Chennai City,
Chennai-600 008.

4.The Superintendent,
Central Prison,
Chennai.

5.Central Bureau of Investigation,
rep.by its Joint Director,
Shastri Bhavan,
Haddows Road,
Chennai-600 006. ... Respondents

Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure for the relief as stated therein.

For petitioners : Mr.P.Rathinam

^For R.1 to R.4 : Mr.I.Subramaniam,
Public Prosecutor,
High Court, Madras.

For R.5 : Mr.N.Ranganathan, Spl.P.P.

:O R D E R

The petitioners, all Advocates eight in number, have filed the above criminal original petition as against the Government of Tamil Nadu and its Police officials and the Superintendent of Police, Central Prison, Chennai, impleading also the Central Bureau of Investigation praying to direct the fifth respondent/CBI to take up the investigation in Cr.No.333 of 2003 on the file of J-1, Saidapet Police Station, Chennai and investigate the same under the direct supervision of the Joint Director, CBI, Chennai and proceed with the same as per law, direct the first respondent to keep away the police personnel, against whom prima facie case is found, from the city of Chennai till the investigation of the case in the said crime number is completed and to order adequate compensation to the families of the deceased Rajaram and Saravanan.

2. In the affidavit filed in support of the above criminal original petition sworn by the first petitioner on his behalf and on behalf of the other petitioners, they would submit that they are fully aware of the facts regarding the death of the two persons viz. Rajaram and Saravanan in the alleged encounter with the police on 25.3.2003 at about 7.00 p.m. which sent shock-waves to the entire Tamil Nadu and such deaths are reportedly taking place without the minimum check and hence they are filing the present petition to curb the menace of killing people in the so-called encounters for intervention and prevention of such execution.

3. The petitioners would further submit that on the fateful day, those two persons were killed at Kotturpuram road close to the Bridge in Chennai; that they gathered information and felt that the police version of the encounter and vanishing of the white Qualis Toyota van was distorted and baseless; that one of the deceased Rajaram was in judicial custody and was escorted to the Courts of Metropolitan Magistrates No.IX and XVII, Saidapet, Chennai for remand extension; that it was pre-planned by the police officers and that the leading English Daily "The Hindu", dated 26.3.2003 carried the news item under the caption "Two militants killed at Chennai shootout". Extracting the relevant portions from the news item of `The Hindu', the petitioners would brand the police version to be unbelievable and artificial and they would further state that they realised that they have to approach the Tamil Nadu State Human Rights Commission which could issue appropriate direction and get the copies of the relevant documents; that they contacted the Member of the Commission and requested speedy action and the Member has ordered notice to the third respondent.

4. The petitioners would further submit that on 28.3.2003,

some of them visited the place and inquired with the residents of that locality and all of them uniformly replied that they did not hear any firing sound, but their categorical statement is that the police stopped the vehicular movement on the whole stretch of road from 6.00 p.m. onwards on 25.3.2003 and two or three days prior to the incident, the pavement vendors were cleared; that they approached the Human Rights Commission for conducting the second post mortem on the bodies of the deceased; that the third respondent's claims are supported by the first and second respondents stoic silence; that the attitude of the first and second respondents is only showing green signals for such barbaric violation of human rights and giving impression that they are making efforts to suppress the truth and to get a favourable report regarding the post mortem conducted at the Government Royapettah Hospital; that their experiences in dealing with such cases are that the Doctors are not allowed to discharge their duties in the conduct of the post mortem and they are won over and hence they feel that a second post mortem is necessary; that on a similar situation, in an earlier occasion, the Division Bench of this Court, by its order dated 10.4.199 2 in W.A.No.409 of 1992 has ordered exhumation of the dead body of one Virrupalingam from the grave and to get a fresh post mortem examination conducted and report accordingly and directed the Investigating Officer to nominate two Medical Officers, of whom one must be Dr. Chandra Sekaran, the then Director of the Forensic Science Laboratory, Madras; that since the Human Rights Commission is not properly functioning on account of the vacancy of the Chairperson and another Member, the petitioners are approaching this Court for the conduct of repost mortem on the bodies of the deceased Rajaram and Saravanan; that none of the relatives have claimed the bodies and no official decision has been taken regarding the disposal of the bodies.

5. The petitioners further furnishing their attempt made with The Human Rights Commission praying for a second post mortem on the bodies of the deceased on account of the handicap of the commission and due to the non-availability of the only Member, no speedy relief was able tobe arranged. Furnishing the details regarding their contribution in bringing out the gang rape committed on Rita Mary by the guardians of law under judicial custody in Sub Jail, Gingee and her illegal confinement with the gang of brothel keepers at Attur and at Tindivanam where she was forcibly introduced in the flesh trade and ultimately in the Sub Jail at Gingee and the foisting of the criminal cases against four youths who came to her rescue and the earnest endeavour made on the part of the petitioners in getting justice for such atrocities committed on the part of the police in uniform in getting compensation for the victim through Court. The petitioners would give the plight of one of the deceased Rajaram to escape from the clutches of the Police, who were after his blood ultimately making his arrest on 19 .7.2002.

6. The petition would further go to show that the State Administration is being controlled by various groups on caste line who indulge in abuse of the state power thus chasing the youth to extremism and would also cite the example of a lady Advocate viz. Mrs.Nirmala Rani, who was unreasonably chargesheeted under the provisions of the SC & ST (PA) Act by

sheer abuse of power by the police at Trichy and quoting from the order of this Court pertaining to the remedial measures recommended to the Government against such atrocities of the Police. The petitioners would then deal with the case of Saravanan, who was allegedly used by the Police as an informer and since he was not cooperative in complying with the dictates of some of the police officers, he was also targeted and various groups of police personnel conspiring with each other evolved a strategy to annihilate both the deceased and masterminded the fake encounter and eliminated the deceased. The petitioners would then start narrating as to how the protective prohibitions of the constitutional mandate provided for those who are in custody of the police and how warding-off those provisions, the arrested persons are ill-treated at the hands of the police keeping under illegal detention

7. At this juncture, the petitioners would cite Justice Khalid Commission's recommendations against Human Rights violations and provisions made for compensation to the victims and their families.
8. The petition would further deal with as to how the innocent Dalits were brutally attacked by vested interests and how rarely the State administration is able to render its assistance to the victims since it is divided on caste lines thus the situation working against the interests of the Dalits, citing facts and circumstances, which occurred in the past.

9. In the final phase of the petition, the petitioners would cite the case registered regarding the incident said to have occurred on 25 .3.2003 in Cr.No.333/2003 under Sections 341,332,307 and 302 IPC r/w.25(1)(a) and 27 of the Arms Act on the file of J1 Saidapet Police Station and accused have been described as `three identifiable persons', who came in a Qualis van and how in spite of the receipt of the FIR by the Court on 26.3.2003, they were not permitted to peruse the copy of the FIR; that they would further state that the deceased in the occurrence were in judicial custody and there is strong public opinion against the theory put forward by the police and therefore it is but proper to get the above case investigated by the independent agency like the 5th respondent. Quoting from Para Nos.11 of the judgment of the Honourable Apex Court in SUNIL BHATRA vs. DELHI ADMINISTRATION reported in AIR 1980 SC 1579 and suggesting certain norms to be followed and stating for that the deceased Rajaram was in judicial custody and Saravanan was taken into illegal custody days prior to the occurrence and hence adequate compensation need to be granted to the members of the respective families, the petitioners would pray for the reliefs extracted supra.

10. In the counter affidavit filed on behalf of the respondents 1 to 4, the Assistant Commissioner of Police, Central Crime Branch, Chennai would submit that the inherent jurisdiction under Section 482 of the Code of Criminal Procedure could be invoked only in relation to a proceeding before the High Court or any other Subordinate Court which must have a judicial character and not of an executive or administrative one and admittedly, in the case on hand there is no such proceeding either before this Court or in other subordinate criminal Court in respect of which the jurisdiction vested under Section 482 Cr.P.C. is sought to be invoked by the petitioners; that the above criminal original petition proceeds merely on conj

ectures and surmises, sought to be buttressed by certain newspaper reports, which cannot form the basis for seeking to invoke jurisdiction under Section 482 of the Code of Criminal Procedure; that no materials are furnished in support of the petition, so as to warrant interference; that the matter is pending with the Executive Magistrate in the proceedings initiated under Police Standing Order 150 (New Code) on conclusion of which, a report would be submitted to the State Government for further action.

11. The respondents would narrate the facts and circumstances of the case stating that on 25.3.2003, Thiru Rajaram who was an accused in Cr.No.1595/2000 of Vadapalani Police Station for the offences punishable under Sections 4(b) and 5 of the Explosive Substances Act, 1908 was being escorted in a police jeep from the XVII Metropolitan Magistrate's Court, saidapet, Chennai to the Central Prison, Chennai; that around 7.10 p.m., while the police jeep was proceeding down Kotturpuram Bridge, one Kumar @ Saravanan and his associates, who came in a Qualis car with a fake registration number plate, waylaid the police jeep and attempted to rescue Thiru Rajaram from the custody of the escort police and opened fire at the police personnel resulting in an Assistant Commissioner of Police and Inspector of Police sustaining bullet injuries; that Thiru Rajaram utilising this opportunity got down from the police jeep to escape from the custody and two police constables held him and at this juncture, Thiru Saravanan again fired at the constables, which unfortunately hit Thiru Rajaram; that when the police party in turn opened fire to defend themselves, Thiru Saravanan sustained bullet injuries and in the melee when a constable fired at the Qualis Car with his Carbine Weapon (machine gun), the person who was driving the Qualis car and the associates of Thiru Saravanan escaped from the scene and all the injured persons were immediately removed to the Government Royapettah Hospital; that the Assistant Commissioner and the Inspector of Police for their bullet injuries got admitted for treatment and the Doctors in charge of the Hospital, examining Thiru Rajaram and Saravanan announced them as `brought dead'.

12. The respondents would further submit that on the basis of the complaint lodged by the Assistant Commissioner of Police, Saidapet, a case in J1 Saidapet Police Station Cr.No.333/2003 was registered for offences punishable under Sections 341,332,307 and 302 IPC r/w. Section 25(1)(a) and 27 of the Indian Arms Act and the said case got transferred to the Central Crime Branch as per the orders of the Commissioner of Police in his proceeding No.526/COP/Camp/2003, dated 25.3.2003, which is pending investigation; that based on the FIR, the RDO is conducting the proceedings under PSO 150; that the P.A.(General) to Collector of Chennai District-cum-Revenue Divisional Officer conducted the inquest over the dead bodies of Rajaram and Saravanan and witnesses have been examined during the course of the inquest and the Revenue Divisional Officer's report is awaited; that in the above true facts and circumstances, it is incorrect to suggest that there was a fake encounter; that the very fact that the police personnel forming the escort party sustained bullet injuries and the Qualis car had a fake registration number plate, would clearly show that it was only in the course of the attempt to rescue Thiru Rajaram by his associates using firearms, the occurrence took place; that the averments of the petition are not based on any eye witness account; that the averments contained in para No.3 of the petition merely

incorporate a newspaper report, which is inadmissible in evidence as has been consistently held by the Honourable Supreme Court and this High Court; that the averments contained in Paragraphs 5 and 6 are based on surmises and conjectures besides being frivolous and irresponsible insofar as it is concerned with the allegations that the Doctors are amenable to police or that they are not allowed to discharge their duties while conducting the post mortem; that the post mortem has been conducted by a team of Doctors viz. Dr.C.Manohar, the senior most Professor and Head of the Department Forensic Medicine in charge of the Kilpauk Government Medical College Hospital and Government Royapettah Hospital, Chennai ably assisted by Dr.A.N.Shanmugam, who is an Assistant Professor of Forensic Medicine attached to the Government Royapettah Hospital, Chennai and the post mortem has been done in accordance with the guidelines issued by the National Human Rights Commission and the same has also been videographed; that the dead body of Thiru Saravanan was handed over to his mother Smt.Kalyani who claimed it, but since Rajaram abandoned his family for nearly 15 years, his relatives did not show any interest to receive the body from the mortuary.

13. Further denying the rest of the allegations of the petition, the counter affidavit would specifically mention that the cases cited in the criminal original petition have no relevance to the case in hand. The counter affidavit would set out the details of the cases in which Thiru Rajaram had earlier involved totalling 19 in number registered under various police station crime numbers for offences punishable under various sections of the IPC, and Explosive Substances Act, most of which are cases registered under Section 302 or Section 307 or both coupled with allied Sections of the IPC and Explosive Substances Act. Likewise, the cases registered against Saravanan earlier for his involvement have also been listed numbering three, two of which are murder cases and the other one attempt to murder with allied Sections.

14. Further denying the allegation that the State agencies are indulging in terrorism and the claim that Thiru Rajaram was championing the upliftment of the Dalits as incorrect, the counter affidavit would state that the khalid Commission was constituted totally under different circumstances further denying that Thiru Saravanan was in illegal custody, the respondents 1 to 4 would ultimately pray to dismiss the above petition as devoid of merits.

15. In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the learned counsel for the petitioner, the learned Public Prosecutor representing the respondents 1 to 4 and the Special Public Prosecutor for CBI representing the 5 th respondent, it could be assessed that on the death of two persons viz. Rajaram and Saravanan in the alleged encounter with the police on 25.3.2003 at 7.00 p.m. near the Kotturpuram Bridge, Chennai while Thiru Rajaram who was an accused in Cr.No.1595/2000 of Vadapalani Police Station, Chennai was being escorted in a police jeep from the XVII Metropolitan Magistrate's Court, Saidapet, Chennai to the Central Prison, Chennai, around 7.10 p.m. at the time that the police jeep was proceeding down Kotturpuram Bridge, one Kumar @ Saravanan and his associates came in a Qualis car with a fake registration number plate, waylaid

the police jeep and attempted to rescue Thiru Rajaram from the custody of the escort police and opened fire at the police personnel resulting in an Assistant Commissioner of Police and Inspector of Police sustaining bullet injuries; that making use of this opportunity, Thiru Rajaram got down from the police jeep to escape when he was held by two police constables and at this juncture, Thiru Saravanan again fired at the constables, which unfortunately hit Thiru Rajaram and when the police party in turn opened fire to defend themselves, Thiru Saravanan sustained bullet injuries and the associates of Saravanan escaped from the scene and that all other injured persons have been removed to the Government Royapettah Hospital; that the Assistant Commissioner of Police and the Inspector of Police, for their bullet injuries got admitted for treatment and the Doctors in charge of the Hospital, examining Thiru Rajaram and Sarava nan announced as ` brought dead'.

16. It further comes to be known that based on the complaint lodged by the Assistant Commissioner of Police, Saidapet, a case in J1 Saidapet Police Station Cr.No.333/2003 was registered for offences punishable under Sections 341,332,307 and 302 IPC r/w.Section 25(1)(a) and 27 of the Indian Arms Act and the said case got transferred to the Central Crime Branch under the orders of the Commissioner of Police in his proceeding no.526/COP/Campt/2003, dated 25.3.2003, which is pending; that based on the FIR, the Revenue Divisional Officer is conducting the proceedings under PSO 150; that the P.A.(General) to the Collector of Chennai District-cum-Revenue

Divisional Officer conducted the inquest over the dead bodies of Rajaram and Saravanan and witnesses have been examined during the course of inquest and the RDO's report is awaited.

17. The petitioners, who are Advocates, growing suspicious of the manner in which the encounter is alleged to have taken place, as it has been narrated on the part of the respondents No.1 to 4 and further based on the newspaper reports of `The Hindu' the English Daily and `Dina Mani', the Tamil Daily and dubbing the version of the Police as a fake encounter and alleging that the killing of the two was masterminded and orchestrated by the police personnel in a pre-planned manner and causing the arrest of Saravanan, well before hand and making use of the opportunity while taking Rajaram to the Court and back to the prison, a story has been woven to the effect of the encounter to have taken place in the alleged manner, the respondent have come forward to file the above petition dubbing the same as unbelievable, improbable and artificial and further stating that there has been no trace of any such incident having taken place to their enquiry made and information collected from in and around the area within the periphery of which the shoot-out is alleged to have taken place, have come forward to pray for the reliefs extracted in the first paragraph supra.

18. Now the point for consideration is `whether the prayers of the petition could be answered and in what manner any order could be passed by this Court in the wake of the materials made available on record and in the circumstances of the case put forth in the above criminal original petition?'
19. In fact, the reliefs are specific and three in number, the first one being to direct the 5th respondent CBI to take up the

investigation of the case in Cr.No.333 of 2003 registered by J1 Saidapet Police Station, Chennai and investigate the same under the direct supervision of the Joint Director, CBI, Chennai; the second relief being to direct the first respondent to keep away the police personnel, against whom prima facie case is found, from the city of Chennai till the investigation of the case is completed and the third relief being to order adequate compensation to the families of the deceased Rajaram and Saravanan. The second relief is somewhat consequential to the first one and could be answered in the event of answering the first relief in the affirmative and the third relief is an independent one unconnected to any order passed regarding the first two reliefs and in order to arrive at valid conclusions, besides considering the above pleadings of parties, it is relevant to consider the arguments advanced on the part of the respective learned counsel appearing on behalf of parties mentioned supra.

20. During arguments, the learned counsel appearing on behalf of the petitioners, besides tracing the facts and circumstances as narrated in the petition in a nutshell, would also cite the following three judgments:

1. 1994 Supp.(1) Supreme Court Cases 142 and 143 (R.S.SODHI vs. STATE OF U.P. AND OTHERS)
2. (1994) 1 Supreme Court Cases 616 (PUNJAB AND HARYANA HIGH COURT BAR ASSOCIATION, CHANDIGARH THROUGH ITS SECRETARY vs. STATE OF PUNJAB AND OTHERS)
3.The judgment of the Division Bench of the Andhra Pradesh High Court rendered in W.P.No.16868 of 1995 dated 14.8.1995.

21. In the first judgment cited above, in the Pilibhit police encounter deaths, when a request was made by way of Public Interest Litigation by an Advocate, for investigation by an independent agency, the Government of Utter Pradesh has objected to such course on ground that prompt action in handing over the investigation to an officer of IG level was taken by them besides transferring the suspected local police officers for unhindered inquiry further claiming that the investigation to be within its exclusive domain, the Honourable Apex Court, besides ordering an interim compensation of Rs.50,000/= in respect of each of the deaths by its order dated 21.8.1991 (reported in 1994 Supp(1) SCC 142), held (by its order dated 15.5.1992 reported in 1994 Supp (1) SCC 143):

"... since the accusations are directed against the local police personnel, it would be desirable to entrust the investigation to an independent agency like the Central Bureau of Investigation so that all concerned including the relatives of the deceased may feel assured that an independent agency is looking into the matter and that would lend the final outcome of the investigation credibility. However faithfully the local police may carry out the investigation, the same will lack credibility since the allegations are against them. It is only with that in mind that we having though it both advisable and desirable as well as in the interest of justice to entrust the investigation to the Central Bureau of Investigation forthwith and we do hope that it would complete the investigation at an early date so that those involved in the occurrences, one way or the other, may be brought to book."

22. In the second judgment cited above, in a case of abduction and alleged murder of an Advocate, his wife and minor child, the Lawyers went on indefinite strike demanding inquiry by an independent agency and a petition in the nature of publ litigation has been filed by a stranger in which the Bar Associations were directed to be impleaded as parties to the writ petition, placing before the High Court the report of an Action Committee of the Bar Association and other relevant documents, and when the High Court dismissed the petition as withdrawn, the Honourable Apex Court besides holding that the High Court was highly unjustified in dismissing the petition, has further held:

"We are conscious that the investigation having been completed by the police and charge-sheet submitted to the Court, it is not for this Court, ordinarily, to reopen the investigation. Nevertheless, in the facts and circumstances of the present case, to do complete justice in the matter and to instil confidence in the public mind it is necessary, in our view, to have fresh investigation in this case through a specialised agency like the Central Bureau of Investigation (CBI).

We, therefore, direct the CBI to take up the investigation of the case FIR No.10 dated October 8, 1993 under Sections 364,302,201 IPC and Sections 3,4 and 5 of the TADA (P) Act, Police Station Rupnagar, District Ropar with immediate effect. We further direct the Senior Superintendent of Police, Ropar and the Station House Officer, Police Station Rupnagar to assist the CBI in conducting the investigation. The CBI shall exercise all the powers available toit under the Criminal Procedure Code and any other provision of law. The State of Punjab through its Home Secretary is further directed to provide all assistance to the CBI in this respect.

We direct the Director, CBI to depute a responsible officer to hold the investigation as directed by us. This may be done within one week from the receipt of this order. The CBI shall complete the investigation within three months from the date of receipt of this order by the Director and submit its report in accordance with law. The proceedings before the Additional District and Sessions Judge, Ropar, shall remain stayed till March 31, 1994."

23. In the last judgment of the Division Bench of the Andhra Pradesh High Court rendered in Writ Petition No.16868 of 1995 filed under Article 226 of the Constitution of India praying to direct the Sessions Judge to conduct the enquiry into the killing of one Madhusudanaraj, alleged to be a Peoples' War Group Naxalite, and to submit a report to the High Court within a fixed time so as to issue appropriate direction to the Government, the Division Bench of the Andhra Pradesh High Court has observed and held as follows:

"Do we have the law that a group of police personnel will report that they were making arrest of a person who attempted to evade the arrest and since in his attempt to evade the arrest he used force,they returned the force and caused his death and the law would accept the statement and sanctify the end of a life in accordance with the procedure prescribed by law? We have already noticed the guarantee under Article 21 of the Constitution of India and also

that the words " procedure established by law" are not ineffective and lifeless but are expressions of the faith of the people who have sanctioned interference with the life of a person only by a procedure which is reasonable, fair and just...."

"It is difficult even to imagine that police officers who used firearm to hit at the body of Madhusudanaraj Yadav were not aware that by such act they were likely to cause his death. Of course, what they did had a justification or not and, although falling within the definition of an offence, the act by them is excusable or not are matters which shall be dealt with but only when the truth or otherwise of their plea is tested in accordance with law. It will neither be correct nor proper at the outset to ignore altogether the act of the commission of the offence and not to register a case at all of a homicide at the hands of the police personnel who allegedly fired at Madhusudanraj Yadav. We have given our anxious consideration to the matter before us and we see good reasons to hold at this stage that on the statement of the same very police personnel who have alleged that Madhusudanraj Yadav fired at them but caused no injury by the fire-arm, and that they fired at him and as result, Madhusudanraj Yadav got fatal injuries a case should have been registered and investigated in accordance with law by the competent authorities."

".... But we have good reasons to order that the case of assault by the police personnel upon Madhusudanraj Yadav should be registered and investigated by some independent agency and not by any person connected with the Andhra Pradesh Police.... It is a fit case in our opinion in which a direction be issued to the Government of the State of Andhra Pradesh to give sanction and accordingly entrust the case to the Central Bureau of Investigation and direction is issued to the Central Bureau of Investigation ... for registering and investigating the case of the alleged assault resulting in the death of Madhusudanraj Yadav."

Citing the above judgments and reiterating the facts and circumstances brought forth in the petition, the learned counsel for the petitioners would pray for the relief extracted supra.

24. On the part of the respondents 1 to 4, the learned Public Prosecutor, High Court, Madras would also cite a judgment delivered in SECRETARY, MINOR IRRIGATION & RURAL ENGG.SERVICES, U.P. AND OTHERS vs. SAHNGOO RAM ARYA AND ANOTHER reported in 2002 (4) Supreme 91 wherein it has been held:

"While none can dispute the power of the High Court under Article 226 to direct an inquiry by the CBI, the said power can be exercised only in cases where there is sufficient material to come to a prima facie conclusion that there is a need for such inquiry. It is not sufficient to have such material in the pleadings. On the contrary, there is a need for the High Court on consideration of such pleadings to come to the conclusion that the material before it is sufficient to direct such an inquiry by the CBI. This is a requirement which is clearly deducible from the judgment of this Court in the case of Common Cause (1999 (6) SCC 667)."

"It is seen from the above decision of this Court (common cause) that the right to life under Article 21 includes the right of a person to live without

being hounded by the Police or the CBI to find out whether he has committed any offence or is living as a law-abiding citizen. Therefore, it is clear that a decision to direct an inquiry by the CBI against a person can only be done if the High Court after considering the material on record comes to a conclusion that such material does disclose a prima facie case calling for an investigation by the CBI or any other similar agency, and the same cannot be done as a matter of routine or merely because a party makes some such allegations. In the instant case, we see that the High Court without coming to a definite conclusion that there is a prima facie case established to direct an inquiry has proceeded on the basis of `ifs' and `buts' and thought it appropriate that the inquiry should be made by the CBI. With respect, we think that this is not what is required by the law as laid down by this Court in case of Common Case."
Citing the above judgment and placing reliance on the contents of the counter affidavit filed, the learned Public Prosecutor appearing on behalf of the respondents 1 to 4 would pray to dismiss the above criminal original petition.

25. In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the learned counsel for all, as aforementioned, it could be seen that on the part of the petitioners excepting to put forth the newspaper reports and citing the judgments extracted supra, nothing else has been placed before this Court for proper consideration nor even any circumstance worth being considered has been brought froth. The petitioners would only come forward to allege that the story of the encounter alleged on the part of the police to have taken place on the date, time and the place of occurrence and the manner in which it is alleged to have taken place are highly improbable and suspicious and even they will come forward to allege that to their enquiry and information, no such incident had taken place at the time, place and the manner alleged and therefore they would ascertain that it was a fake encounter. The petitioners would further submit that taking advantage of Rajaram being taken to the Court on that particular day and bringing back to the Central Prison, Chennai and securing Saravanan before hand, they have been done to death in a different manner without any encounter of that sort having ever taken place much less at the time, place and the manner alleged. However, not an iota of evidence has been placed on the part of the petitioners to prima facie substantiate their suspicion to the effect that no such occurrence took place in the manner alleged by the respondents but in a different manner the incident had taken place without even alleging as to how contrary to the version of the police, the occurrence, causing the death of the two persons,had taken place. In fact, so far as the death of the two persons are concerned, the petitioners have attributed the different version other than the manner in which it is alleged by the respondents that have taken place but absolutely no light is thrown on their part to substantiate the same.

26. Even the respondents, who come forward to lay emphasis on the version of the alleged encounter to have taken place on 25.3.2003 near Kotturpuram Bridge at about 7.10 p.m., nothing has been placed before this Court to substantiate the same. Neither the RDO enquiry report nor the inquest report nor the Post Mortem certificates pertaining to the conduct of the post mortem on the bodies of the deceased Rajaram and Saravanan accounting

for the bullet injuries and other injuries if any, sustained by them nor even the FIR alleged to have been registered in the J1 Saidapet Police Station Cr.No.333/2003 under Sections 341,332,307 and 302 IPC r/w.Sections 25(1)(a) and 27 of the Indian Arms Act transferring the same to the Central Crime Branch Police for investigation, has been placed before this Court. Therefore, regarding the actual occurrence, the subsequent events and the other circumstances encircling the whole affair, this Court is totally kept in dark and therefore merely on suppositions, surmises, hypothesis and conjectures and only based on the allegations levelled by the petitioners and the respondents 1 to 4 as well, without placing material particulars and documents for proper consideration of this Court, no tangible conclusions could be arrived at by this Court so as to decide anything regarding the prayers of the above criminal original petition.

27. Since even the details of the case registered by the State Police in Cr.No.333/2003 on the file of J1 Saidapet Police Station and transferred to Central Crime Branch, Chennai have not been placed before this Court to know as to what case the respondents have registered not to mention about any of the reports such as the report of the RDO conducted under PSO 150, the inquest report conducted by the P.A.(General) to the District Collector of Chennai and the reports of the post mortem held on the bodies of the deceased, no conclusion could be arrived at by this Court regarding transferring of the case to the CBI as it is sought to be made on the part of the petitioners and therefore, no blunt conclusions could be arrived at by this Court regarding the subject in hand.

28. Even regarding Crl.M.P.No.3158 of 2003 wherein a direction was sought to be issued to the first respondent to arrange to conduct re-post mortem on the dead bodies of the deceased in strict compliance of the relevant guidelines issued by the National Human Rights Commission, when nothing has been placed before this Court particularly regarding the post mortem reports and when the petitioners themselves do not know as to what are the findings of the post mortem reports, they are not entitled to seek for a re-post mortem and hence this request cannot be complied with and this Crl.M.P.No.3158 of 2003 is dismissed as such.

29. Even the cases cited on the part of the petitioners, since no materials connected to the facts have been placed before this Court, this Court is not in a position to apply the norms of the propositions held in the earlier decision of the Honourable Apex Court and the Andhra Pradesh High Court and in this situation, which is fluid, no opinion or observation or remarks could be offered by this Court and the only conclusion that could be arrived at is to say that the petition is premature and has been filed on insufficient, indefinite and vague allegations without placing any material to substantiate the claim on the part of both sides for even making out a prima facie case regarding the prayers. Therefore, the only conclusion that this Court could arrive at is to dismiss the above criminal original petition.

30. In the decision reported in 1994 Supp.(1) SCC 142 (extracted supra), the Honourable Apex Court has granted a sum of Rs.50,000/= towards compensation as an interim measure even at the stage of admission of the petition filed by the petitioner therein whereas here, in the case in hand, this Court is of the view that the bereaved family members of both the

deceased could be provided with a substantial sum not as compensation but as an ex-gratia payment purely on humanitarian grounds. Hence the following order:

In result,
(i)the above criminal original petition, for all the above reasons assigned, is premature and devoid of merits and the same is dismissed as such subject to the following provision for compensation.
(ii)The first respondent Government of Tamil Nadu is directed to identify the next to the kin of the deceased Rajaram and Saravanan and grant a sum of Rs.1 lakh in each case as ex-gratia payment, which shall be provided within thirty days from the date of receipt of a copy of this order.

Index: Yes
Internet: Yes

Rao

To

1.The Secretary to Government of Tamil Nadu,
Home Department,
Secretariat,
Chennai-600 009.

2.The Director General of Police,
Government of Tamilnadu,
Police Headquarters,
Chennai-600 004.

3.The Commissioner of Police,
Chennai City,
Chennai-600 008.

4.The Superintendent,
Central Prison,
Chennai.

5.The Joint Director,
Central Bureau of Investigation,
Shastri Bhavan,
Haddows Road,
Chennai-600 006.

6.The Public Prosecutor,
High Court,
Madras.